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CONSTITUTIONAL PROVISIONS

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DEPARTMENT
OF
TERRITORIAL ENGINEER

SANTA FE, NEW MEXICO.



CONSTITUTIONAL PROVISIONS

AND

IRRIGATION LAW.

November, 1910.

SANTA FE, N. M.
NEW MEXICAN PRINTING COMPANY
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New Mexico Terr. Laws, 1910

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CONSTITUTIONAL PROVISIONS.

IRRIGATION AND WATER RIGHTS.

Section 1. All existing rights to the use of any waters in this state for any useful or beneficial purposes are hereby recognized and confirmed.

Sec. 2. The unappropriated waters of every natural stream, perennial or torrential, within the State of New Mexico, is hereby declared to belong to the public and to be subject to appropriation for beneficial use. In accordance with the law of the State, priority of appropriation shall give the better right.

Sec. 3. Beneficial use shall be the basis, the measure and the limit of the right to the use of water.

Sec. 4. The Legislature is authorized to provide by law for the organization and operation of drainage district and systems.

CHAPTER 10

IRRIGATION LAWS.

CHAPTER 49.

An Act to Conserve and Regulate the Use and Distribution of the Waters of New Mexico; to Create the Office of Territorial Engineer; to Create a Board of Water Commissioners, and for other Purposes. H. B. No. 120; Approved March 19, 1907.

Be it enacted by the Legislative Assembly of the Territory of New Mexico:

Section 1. All natural waters flowing in streams and water courses, whether such be perennial, or torrential, within the limits of the Territory of New Mexico, belong to the public and are subject to appropriation for beneficial use.

Sec. 2. Beneficial use shall be the basis, the measure and the limit of the right to the use of water, and all waters appropriated for irrigation purposes, except as otherwise provided by written contract between the owner of the land and the owner of any ditch, reservoir or other works for the storage or conveyance of water, shall be appurtenant to specified lands owned by the persons, firm or corporation having the right to use the water, so long as the water can be beneficially used thereon, or until the severance of such right from the land in the manner hereinafter provided. Priority in time shall give the better right. In all cases of claims to the use of water initiated prior to the passage of this act, the right shall relate back to the initiation of the claim, upon the diligent prosecution to completion of the necessary surveys, and construction for the application of the water to a beneficial use. All claims to the use of water initiated after the passage of this act shall relate back to the date of the receipt of an application therefor in the office of the territorial engineer, subject to compliance with the provisions of this act, and the rules and regulations established thereunder.

Sec. 3. The United States, the Territory of New Mexico, or any person, firm, association or corporation, may exercise the right of eminent domain, to take and acquire land right-of-way for the construction, maintenance and operation of reservoirs, canals, ditches, flumes, aqueducts, pipe lines or other works for the storage or conveyance of water for beneficial uses, including the right to enlarge existing structures, and to use the same in common with the former owner; any such right-of-way for canal, ditch, pipe line, or other means for the conveyance of water shall in all cases be so

located as to do the least damage to private or public property consistent with proper use and economical construction. Such land and right-of-way shall be acquired in the manner provided by law for the condemnation and taking of private property in the Territory of New Mexico for railroad, telegraph, telephone and other public uses and purposes. The engineers and surveyors of the United States, the Territory and of any person, firm or corporation shall have the right to enter upon the lands and waters of the Territory and of private persons and of private and public corporations, for the purpose of making hydrographic surveys and examinations and surveys necessary for selecting and locating suitable sites and routes for reservoirs, canals, pipe lines and other water works, subject to responsibility for any damage done to such property, in making such surveys.

Sec. 4. There shall be a territorial engineer, who shall be a technically qualified and experienced hydraulic engineer, and who shall be appointed by the governor and such appointment confirmed by the council. He shall hold office for the term of four years from and after his appointment, or until his successor shall have been appointed, and shall have qualified. He shall be subject to removal only for cause. He shall have general supervision of the waters of the Territory and of the measurement, appropriation, and distribution thereof, and such other duties as are required by this act. He shall receive a salary of two thousand dollars per annum and actual necessary traveling expenses while away from his office in the discharge of official duties. The office of the territorial engineer shall be located at the seat of government. He shall not engage in any private practice except as consulting engineer: Provided, however, That he may establish a schedule of fees for drawing plans, preparing specifications and giving expert advice and other services as consulting engineer, and charge such fees for services, making a report to the auditor of Territory of all fees and compensation paid to him for such services: Provided, further, That when the total amount collected for such services as consulting engineer as hereinabove defined shall have amounted to the sum of two thousand dollars, that any fees collected thereafter, during any one year, shall be turned into the treasury of the Territory.

Sec. 5. The territorial engineer may employ assistants and purchase materials and supplies for the proper conduct and maintenance of his office and department, in pursuance of appropriations as made from time to time for such purposes. The salaries and expenses of the office of the territorial engineer shall be paid at the same time and in the same manner as those of other officers of the Territory.

Sec. 6. Before entering upon the duties of his office the territorial engineer shall take the oath as prescribed by law for territorial officials. He shall file with the Secretary of the Territory, a bond, in the penal sum of ten thousand (\$10,000) dollars, to be approved by the attorney general, and conditioned upon the faithful discharge of his duties, and for delivery to his successor of all property belonging to the public then in his possession or control.

Sec. 7. All claims for services rendered, expenses incurred, or materials or supplies furnished under the direction of the territorial

engineer and which are payable from the funds appropriated for the prosecution of the work under his direction and supervision, shall be approved by the territorial engineer and properly vouchered and filed in the office of the territorial auditor, who shall, if he finds the same to have been incurred in accordance with law, audit and allow such claims and issue his warrant on the treasurer in payment thereof.

Sec. 8. The territorial engineer shall prepare and deliver to the governor, on or before November 30th of the year preceding the regular session of the legislature, and at other times when required by the governor, a full report of the work of his office, including a detailed statement of the expenditures thereof to and including October 31st, with such recommendations for legislation and appropriation as he deem advisable.

Sec. 9. The territorial engineer shall receive the following fees, to be collected in advance and to be paid by him into the hydrographic survey fund of the territorial treasury herein provided for upon the last day of March, June, September and December of each year.

(a) For filing and examining an application for permit to appropriate water, map, and field notes of the same, which shall include the filing of proofs of publication and all other papers relating to the application up to the recording of the permit to appropriate water, five dollars.

(b) For recording any permit, certificate of construction or license issued or any other water right instrument, one dollar for the first hundred words, and fifteen cents for each additional hundred words or fraction thereof.

(c) For filing any other paper necessarily forming a part of the permanent record of the water right application, permit, or license, fifty cents.

(d) For issuing certificates of construction, or license to appropriate water, one dollar each.

(e) For making copy of any document recorded or filed in his office, fifteen cents for each hundred words or fraction thereof.

(f) For blue print copy of any map or drawing, ten cents per square foot or fraction thereof. For other copies of drawings, actual cost of the work.

(g) For certifying to such copies, one dollar for each certificate.

(h) For examining, in connection with water right applications, plans and specifications for any dam, not exceeding ten feet in extreme height from the foundation, ten dollars; for a dam higher than ten feet and not exceeding thirty feet, twenty dollars; for a dam higher than thirty feet and not exceeding fifty feet, thirty dollars; for a dam higher than fifty feet, fifty dollars; or for a canal or other water conduit of an estimated capacity exceeding fifty and not more than one hundred cubic feet per second, twenty dollars; for an estimated capacity exceeding one hundred cubic feet per second, thirty dollars.

(i) For inspecting dam sites and construction work when required by law, ten dollars per day and actual and necessary traveling expenses. The fees for any inspection deemed necessary by the territorial engineer and not paid on demand shall be a lien on any land

or other property of the owner of the works, and may be recovered by the territorial engineer in any court of competent jurisdiction.

(j) For rating ditches or inspecting plans and specifications of works for the diversion, storage and carriage of water, at the request of private parties, not in connection with an application for right to appropriate water, actual cost and expenses; and the territorial engineer shall attach his approval to such plans and specifications if found satisfactory.

(k) For such other work as may be required of his office, such reasonable fees as the extent and character of the work shall justify.

(l) In ascertaining actual cost of any work, as the term is used in this section, the salary of any salaried officer for the time employed shall be included.

Sec. 10. The records of the office of the territorial engineer are public records, shall remain on file in his office, and shall be open to the inspection of the public at all times during business hours. Such records shall show all applications filed, with date of filing, and shall show in full all permits, certificates of completion of construction, and licenses issued, together with all action thereon, and all action or decisions of the territorial engineer affecting any rights or claims to appropriate water. Certified copies of any records or papers on file in the office of the territorial engineer shall be evidence equally with the originals thereof; and when introduced as evidence shall be held as of the same validity as the originals.

Sec. 11. The territorial engineer, subject to the approval of the board of water commissioners created by this act, shall make all necessary rules and regulations to carry into effect the duties devolved upon his office.

Sec. 12. The territorial engineer shall have the supervision of the apportionment of water in this Territory according to the licenses issued by him and his predecessors and the adjudications of the courts.

Sec. 13. The territorial engineer shall, from time to time, as may be necessary for the economical and satisfactory apportionment of the water, divide the Territory in conformity with drainage areas, into water districts to be designated by names, and to comprise as far as possible one or more distinct streams systems in each district. The districts may be changed from time to time as may, in his opinion, be necessary for the economical and satisfactory apportionment of water.

Sec. 14. The territorial engineer shall upon the written application of a majority of the water users of any district in this Territory, appoint a water master for such district in the Territory, who may, for cause, be removed by the territorial engineer, and shall be removed upon a petition of a majority of the water users of said district. The water master shall have immediate charge of the apportionment of waters in his district under the general supervision of the territorial engineer, and he shall so appropriate, regulate and control the waters of the district as will prevent waste. The territorial engineer may, if in his opinion the public safety or interests of water users in any district in the Territory require it, appoint

such water master for temporary or permanent service in such district, in the absence of the application above provided for.

Sec. 15. Any person may appeal from the acts or decisions of the water master, to the territorial engineer, who shall promptly and at a state time and place, to be fixed by him, upon due notice to the parties, hear and determine the matter in dispute, and his decision shall be final, unless an appeal is taken to the board of water commissioners as provided in this act.

Sec. 16. The water master shall be allowed pay at a rate fixed by the territorial engineer, not exceeding four dollars per day and actual and necessary expenses in the performance of his duties. He may employ assistants in case of emergency, upon the specific authority of and at rates of pay as authorized by the territorial engineer, such employment to continue only during the existency of the emergency. The water master and the assistants employed by him shall be paid by the county, upon accounts approved by the territorial engineer. If the district is in more than one county, each county shall pay its proportionate part of each account rendered. The accounts of the water master shall in all cases specify the distribution of the amounts charged based upon the quantity of water received by each water user by each ditch owner in proportion to the total quantities delivered to all and shall show the charges to be allotted to each water user and ditch owner. The amounts paid by the counties shall be a lien upon the property of the water users and ditch owners, in accordance with the distribution thereof, as shown by the accounts of the water master, and shall be collected in the manner provided by law for the collection of taxes.

Sec. 17. Each water master shall report to the territorial engineer, as often as may be deemed necessary by the engineer as to the amount of water needed to supply the requirements of his districts the amount available, the works which are without their proper supply, the supply required during the period preceding his next regular report, and such other information as the engineer may require. These reports shall, at the end of each irrigation season, be filed in the office of the territorial engineer. The territorial engineer shall give directions for correcting any errors of apportionments that may be shown by such reports.

Sec. 18. Whenever requested so to do by any of the boards of commissioners of any of the counties of the Territory, it is hereby made the duty of the territorial engineer, either himself, or by any authorized assistant engineer, to co-operate with the said county commissioners in the engineering work required to lay out, establish and construct any drain to be used by any county or counties, or portions of the same, for the purpose of diverting flood waters, lakes, water courses, and in general to aid and assist the counties of this Territory or other authorized officers, in making preliminary surveys and establishing systems of drainage, or any other engineering work.

Sec. 19. The territorial engineer shall make hydrographic surveys and investigation of each stream system and source of water supply in the Territory, beginning with those most used for irrigation, and obtaining and recording all available data for the determination, development and adjudication of water supply of the Territory; in-

cluding the location and survey of suitable sites for dams and reservoirs and the determination of the approximate water supply, capacity and cost of each. He shall be authorized to co-operate with the agencies of the United States engaged in similar surveys and investigations, and in the construction, of works for the development and use of the water supply of the Territory, expending for such purposes any money available for the work of his office, and may accept and use in connection with the operations of his department the results of the agencies of the United States.

Sec. 20. Upon the completion of such hydrographic survey of any stream system, the territorial engineer shall deliver a copy of so much thereof as may be necessary for the determination of all rights to the use of the waters of such system together with all other data in his possession necessary for such determination, to the attorney general of the Territory who shall, at the request of the territorial engineer, enter suit on behalf of the Territory for the determination of all rights to the use of such water, in order that the amount of unappropriated water subject to disposition by the Territory under the terms of this act may become known, and shall diligently prosecute the same to a final adjudication: Provided, That if suit for the adjudication of such rights shall have been begun by private parties, the attorney general shall not be required to bring suit: Provided, however, That the attorney general shall intervene in any suit for the adjudication of rights to the use of water, on behalf of the Territory, if notified by the territorial engineer that in his opinion the public interest requires such action.

Sec. 21. In any suit for the determination of a right to the use of the waters of any stream system, all those whose claim to the use of such waters are of record and all other claimants, so far as they can be ascertained, with reasonable diligence, shall be made parties. When any such suit has been filed the court shall, by its order duly entered, direct the territorial engineer to make or furnish a complete hydrographic survey of such stream system as hereinbefore provided, in order to obtain all data necessary to the determination of the rights involved. The costs of such suit, shall include the fees of witnesses, the taking of depositions and the fees of the officers for serving process and together with the costs on behalf of the Territory, shall be charged against each of the private parties thereto in proportion to the amount of water right allotted. The court in which any suit involving the adjudication of water rights may be properly brought shall have exclusive jurisdiction to hear and determine all questions necessary for the adjudication of all water rights within the stream system involved; and may submit any question of fact arising therein to a jury or to one or more referees, at its discretion: and the attorney general may bring suit as provided in Section 21 in any court having jurisdiction over any part of the stream system, which shall likewise have exclusive jurisdiction for such purposes.

Sec. 22. For the purpose of providing the money required for any surveys so ordered by the court, there is hereby appropriated and set apart from any moneys in the territorial treasury, except the fund for the payment of interest on the bonded debt, the sum of three thousand dollars, to be known as the "Hydrographic Survey Fund,"

which shall be a permanent fund and which shall be used only for the payment of the expenses of such surveys; and all claims for services rendered, expenses incurred or materials or supplies furnished under the direction of the territorial engineer in the prosecution of said work shall be approved by the territorial engineer and properly vouchered and filed in the office of the territorial auditor, who shall, if he finds the same to have been incurred in accordance with law, audit and allow such claims and issue his warrants against the Hydrographic Survey Fund on the territorial treasurer in payment thereof.

Sec. 23. Upon the adjudication of the rights to the use of the waters of a stream system, a certified copy of the decree shall be prepared and filed in the office of the territorial engineer by the clerk of the court, at the cost of the parties. Such decree shall in every case declare, as to the water right adjudged to each party, the priority, amount, purpose, periods and place of use, and as to water used for irrigation, except as otherwise provided in this act, the specific tracts of land to which it shall be appurtenant, together with such other conditions as may be necessary to define the right and its priority.

Sec. 24. Any person, association or corporation, public or private, hereafter intending to acquire the right to the beneficial use of any waters, shall, before commencing any construction for such purposes, make an application to the territorial engineer for a permit to appropriate, in the form required by the rules and regulations established by him. Such rules and regulations shall, in addition to providing the form and manner of preparing and presenting the application, require the applicant to state the amount of water and period or periods of annual use, and all other data necessary for the proper description and limitation of the right applied for, together with such information, maps, field notes, plans and specifications as may be necessary to show the method and practicability of the construction and the ability of the applicant to complete the same. All such maps, field notes, plans and specifications shall be made from actual surveys and measurements, and shall be duly filed in the office of the territorial engineer after the approval of the application. The territorial engineer may require additional information not provided for in the general rules and regulations, in any case involving the diversion of five hundred cubic feet of water per second, or more, or in the construction of a dam more than thirty feet high from the foundation. The owners of works proposing to store or carry water in excess of their needs for beneficial use, may make application for such excess, and shall be held as trustees of such right for the parties applying the water to a beneficial use; and shall be required to sell water rights for a reasonable price and to furnish the water for such parties at reasonable rates for storage, or carriage, or both, as the case may be.

Sec. 25. The date of receipt of such application in the territorial engineer's office shall be endorsed thereon and noted in his record. If the application is defective as to form, or unsatisfactory as to feasibility or safety of plan, or as to the showing of ability of the applicant to carry the construction to completion, it shall be returned with a

statement of the corrections, amendments or changes required, within thirty days after its receipt, and sixty days shall be allowed for the refiling thereof. If refiled, corrected as required within such time, the application shall, upon being accepted, take priority as of date of its original filing, subject to compliance with the further provisions of the law and the regulations thereunder. Any corrected application filed after the time allowed shall be treated in all respects as an original application received on the date of its filing: Provided, That the plans of the construction may be amended, with the approval of the territorial engineer, at any time; but no such change shall authorize any extension of time for construction beyond five years from the date of the permit, except as provided in Section 35: Provided, further, That a change in the proposed point of diversion of water from a stream shall be subject to the approval of the territorial engineer, under the provisions of Section 45 hereof, and shall not be allowed to the detriment of the rights of others having valid claims to the use of water from said stream.

Sec. 26. Upon the filing of an application which complies with the provisions of this act and the rules and regulations established thereunder, accompanied by the proper fees, the territorial engineer shall instruct the applicant to publish notice thereof, in a form prescribed by him, in some newspaper of general circulation in the stream system, once a week for two consecutive weeks. Such notice shall give all essential facts as to the proposed appropriation; among them, the places of appropriation and of use, amount of water, the purpose for which it is to be used, name and address of applicant and the time when the application shall be taken up by the territorial engineer for consideration. Proof of publication, as required, shall be filed with the territorial engineer within sixty days of his instructions to make publication. In case of failure to file satisfactory proof of publication in accordance with the rules and regulations applicable thereto, within the time required, the application shall thereafter be treated as an original application filed on the date of receipt of proofs of publication in proper form.

Sec. 27. Upon the receipt of the proofs of publication, accompanied by the proper fees, the territorial engineer shall determine from the evidence presented by the parties interested, from such surveys of the water supply as may be available, and from the records, whether there is unappropriated water available for the benefit of the applicant. If so, he shall endorse his approval on the application, which shall thereupon become a permit to appropriate water, and shall state in such approval the time within which the construction shall be completed, not exceeding five years from the date of approval, and the time within which the water shall be applied to a beneficial use, not exceeding four years in addition thereto: Provided, That the territorial engineer may, in his discretion, approve any application for a less amount of water, or may vary the periods of annual use, and the permit to appropriate water shall be regarded as limited accordingly.

Sec. 28. If, in the opinion of the territorial engineer, there is no unappropriated water available, he shall reject such application. He shall decline to order the publication of notice of any application

which does not comply with the requirements of the law and the rules and regulations thereunder. He may also refuse to consider or approve an application or to order the publication of notice thereof, if, in his opinion, the approval thereof would be contrary to the public interest.

Sec. 29. The construction of the works shall be diligently prosecuted to completion, and if one-fifth of the work shall not be completed within one-half the time allowed, as determined by the territorial engineer, he may accept and approve, as herein provided, an application for the use of all or any of the waters included in the permit issued to the prior applicant and the right to use such waters under the former permit shall thereupon be forfeited: Provided, That the territorial engineer shall allow an extension of time on request of the prior applicant, equal to the time during which work was prevented by the operation of law or other causes, beyond the power of the said applicant to control.

Sec. 30. On the date set for the completion of the work, or prior thereto, upon notice from the owner that the work has been completed, the territorial engineer shall cause the work to be inspected, after due notice to the owner of the permit. Such inspection shall be thorough and complete, in order to determine the actual capacity of the works, their safety and efficiency. If not properly and safely constructed, the territorial engineer may require the necessary changes to be made within a reasonable time, to be fixed by him, and shall not issue his certificate of completion until such changes are made. If at or before the expiration of said time, good cause is shown why said change could not be made within said time, then additional time may be allowed in which to make said change. Failure to make such changes shall cause the postponement of the priority under the permit for such time as may elapse from the date for completing such changes until made to the satisfaction of the territorial engineer, and applications subsequent in time shall have the benefit of such postponement of priority; Provided, That for works involving the diversion of not exceeding twenty cubic feet of water per second or a dam not exceeding ten feet in the extreme height from the foundation, the territorial engineer may, in his discretion, accept the report of the inspection by a reputable hydraulic engineer.

Sec. 31. When the works are found in satisfactory condition, after inspection, the territorial engineer shall issue his certificate of construction, setting forth the actual capacity of the works and such limitations on the water right as shall be warranted by the condition of the works, but in no manner extending the rights described in the permit.

Sec. 32. If the territorial engineer, shall, in the course of his duties, find that any works used for the storage, diversion or carriage of water are unsafe and a menace to life or property, he shall at once notify the owner or agent, specifying the changes necessary and allowing a reasonable time for putting the works in safe condition. Upon the request of any party, accompanied by the estimated cost of inspection, the territorial engineer shall cause any alleged unsafe works to be inspected. If they shall be found unsafe by the territorial engineer, the money deposited by such party shall be

refunded, and the fees for inspection shall be paid by the owner of such works; and, if not paid by him within thirty days after the decision of the territorial engineer, shall be a lien against the property of such owner, to be recovered by suit instituted by the district attorney of the county at the request of the territorial engineer. The territorial engineer, may, when in his opinion necessary, inspect any works under construction for the storage, diversion, or carriage of water, and require any changes necessary to secure their safety; and the fees for such inspection shall be a lien on any property of the owner and shall be subject to collection as provided herein: Provided, That any works constructed by the United States, or by its duly authorized agencies, shall not be subject to such inspection while under the supervision of the officers of the United States.

Sec. 33. The use of works for the storage, diversion, or carriage of water, contrary to the instructions of the territorial engineer, at any time after an inspection thereof by him, and receipt of notice from him that the same are unsafe for the purpose for which they are used, until the receipt of notice from him that in his opinion they have been made safe, shall be a misdemeanor, and it shall be the duty of the territorial engineer to give prompt notice to the district attorney of the county in which works are located in case of such violation. The district attorney shall at once proceed against the owner, and all parties responsible therefor.

Sec. 34. On or before the date set for the application of the water to a beneficial use, the territorial engineer shall cause the works to be inspected, after due notice to the owner of the permit. Upon the completion of such inspection, the territorial engineer shall issue a license to appropriate water to the extent and under the condition of the actual application thereof to beneficial use, but in no manner extending the rights described in the permit: Provided, That the inspection to determine the amount of water applied to beneficial use shall be made at the same time as that of the constructed work, if requested by the owner, and if such action is deemed proper by the territorial engineer.

Sec. 35. The territorial engineer shall have power to extend the time for the completion of construction, or for application to beneficial use, for three and two years, respectively, but only on account of delays due to physical and engineering difficulties which could not have been reasonably anticipated, or by operation of law, or other causes, beyond the power of the applicant to avoid.

Sec. 36. Any permit or license to appropriate water may be assigned, but no such assignment shall be binding, except upon the parties thereto, unless filed for record in the office of the territorial engineer. The evidence of the right to use water from any works constructed by the United States, or its duly authorized agencies, shall in like manner be filed in the office of the territorial engineer, upon assignment; Provided, That no right to appropriate water, except water for storage, reservoirs, for irrigation purposes shall be assigned, or the ownership thereof in any wise transformed, apart from the land to which it is appurtenant, except in the manner, specially provided by law: Provided, further, That the transfer of title of land in any manner whatsoever shall carry with it all rights to

the use of water appurtenant thereto for irrigation purposes, unless previously alienated in the manner provide by law.

Sec. 37. In any suit concerning water rights, or in any suit or appeal provided for in this act, the court may in its discretion submit any question of fact arising therein to a jury, or may appoint a referee or referees to take testimony and report upon the rights of the parties.

Sec. 38. The attorney general and the district attorney of the county in which legal questions arise, shall be the legal advisers of the territorial engineer, and shall perform any and all legal duties necessary in connection with his work, without other compensation than their salaries as fixed by law, except when otherwise provided.

Sec. 39. The owner or owners of any works for the storage, diversion, or carriage of water, which contain water in excess of their needs for irrigation or other beneficial use for which it has been appropriated, shall be required to deliver such surplus at uniform rates to parties entitled to use the same under like conditions and circumstances.

Sec. 40. Whenever the proper officers of the United States, authorized by law to construct works for the utilization of waters within the Territory, shall notify the territorial engineer that the United States intends to utilize certain specified waters, the waters so described, and unappropriated, and not covered by applications or affidavits duly filed or permits as required by law, at the date of such notice, shall not be subject to a further appropriation under the laws of the Territory for a period three years from the date of said notice, within which time the proper officers of the United States shall file plans for the proposed work in the office of the territorial engineer for his information, and no adverse claim to the use of water required in connection with such plans, initiated subsequent to the date of such notice, shall be recognized under the laws of the Territory, except as to such amount of the water described in such notice as may be formally released in writing by an officer of the United States, thereunto duly authorized: Provided, That in case of failure to file plans of the proposed work within three years, as herein required, the waters specified in the notice given by the United States to the territorial engineer shall become public waters, subject to general appropriations.

Sec. 41. The standard of measurement of the flow of water shall be the cubic foot per second of time; the standard of measurement of the volume of water shall be the acre-foot, being the amount of water upon an acre covered one foot deep, equivalent to forty-three thousand five hundred and sixty cubic feet. The miner's inch shall be regarded as one-fiftieth of a cubic foot per second in all cases, except when some other equivalent of the cubic foot per second has been specifically stated by contract, or has been established by actual measurement or use.

Sec. 42. When the party entitled to the use of water fails to beneficially use all or any part of the water claimed by him, for which a right of use has vested, for the purpose for which it was appropriated or adjudicated, except the water for storage reservoirs, for a

period of four years, such unused water shall revert to the public and shall be regarded as unappropriated public water.

Sec. 43. In the issuance of permits to appropriate water for irrigation or in the adjudication of the rights to the use of water for such purpose, the amount allowed shall not be in excess of the rate of one cubic foot of water per second for each seventy acres, or the equivalent thereof, delivered on the land.

Sec. 44. All water used in this Territory for irrigation purposes, except as otherwise provided in this act, shall be considered appurtenant to the land upon which it is used, and the right to use the same upon said land shall never be severed from the land without the consent of the owner of the land; but by and with the consent of the owner of the land, all or any part of said right may be severed from said land, and simultaneously transferred for other purposes, without losing priority of right theretofore established, if such changes can be made without detriment to existing rights, on the approval of an application of the owner to the territorial engineer. Before the approval of such application, the applicant must give notice thereof by publication, in the form required by the territorial engineer, once a week for four consecutive weeks in a newspaper of general circulation in the stream system in which the tract or tracts of land may be situated.

Sec. 45. An appropriator of water may use the same for other than the purpose for which it was appropriated, or may change the place of diversion, storage, or use, in the manner, and under the conditions, prescribed in Sections 25 and 44 of this act.

Sec. 46. Every ditch owner shall when requested so to do by the territorial engineer, construct and maintain a substantial headgate at the point where the water is diverted, and shall construct a measuring device, of a design approved by the territorial engineer, at the most practicable point or points for measuring, and apportioning the water as determined by the territorial engineer. The territorial engineer may order the construction of such device by the ditch owner, and if not completed within twenty days thereafter, refuse to deliver water to such owner. The taking of the water by such ditch owner, after refusal by the territorial engineer to deliver water to him, until the construction of such device and the approval thereof by the territorial engineer, shall be a misdemeanor. Such devices shall be so arranged that they can be locked in place, and when locked by the territorial engineer or his authorized agent, for the measurement or apportionment of water, it shall be a misdemeanor for any authorized person to interfere with, disturb or change the same.

Sec. 47. Any person, association or corporation interfering with or injuring or destroying any dam, head-gate, weir, benchmark or other appliance for the diversion, carriage, storage, apportionment, or measurement of water, or for any hydrographic surveys, or who shall interfere with any person or persons engaged in the discharge of duties connected therewith, shall be guilty of a misdemeanor, and shall also be liable for the injury or damage resulting from such unlawful act. The territorial engineer or any authorized assistant shall have power to arrest any person offending against the provisions of this section, and deliver him to the nearest peace officer of the

county. It shall be the duty of the person making the arrest to make complaint at once before the court having jurisdiction thereof. The territorial engineer, the water masters, and their authorized assistants, and agents may enter upon private property for the performance of their respective duties, doing no unnecessary injury thereto.

Sec. 48. The unauthorized use of water to which another person is entitled, or the wilful waste of water to the detriment of another, or the public shall be a misdemeanor. It shall also be misdemeanor to begin to carry on any construction of works for storing or carrying water until after the issuance of permit to appropriate such waters except in the case of construction carried on under authority of the United States.

Sec. 49. The owner or owners of any ditch, canal, or other structure for carrying or storing water, shall construct a substantial bridge where the same crosses any public road, with a passageway not less than fourteen feet wide; or reconstruct the road in a substantial manner and in a convenient location for public travel. Any violation of the provisions of this section shall be a misdemeanor. The county commissioners shall be authorized to construct such bridge or road, if not built by the owner of the work within three days after the obstruction of the road, and may recover the expense thereof and costs in a civil suit, unless the same shall be paid by the owner of the works within ten days after demand therefor. The county commissioners may make reasonable requirements as to the size and character of such bridges along public highways, or for the necessary reconstruction of roads, and upon failure to comply therewith, may do the necessary work and collect the expense thereof and costs as hereinbefore provided. After the construction of such bridge or road as part of a public highway, the same shall be maintained by the county commissioners. The owner or owners of any ditch, canal or other structure for carrying or storing water shall keep the same in good repair at the crossing of any highway or publicly traveled road or at other places where the water therefrom may flow over or in any wise injure any road or highway; and the commissioners shall require necessary repairs for the protection of the roads to be made or shall make them at the expense of the owners of such works and collect the expense thereof, and costs as herein provided.

Sec. 50. Whenever any appropriator of water has the right-of-way for the storage, diversion, or carriage of water, it shall be unlawful to place or maintain any obstruction that shall interfere with the use of the works, or prevent convenient access thereto. Any violations of this section shall be a misdemeanor.

Sec. 51. All violations of the provisions of this act, declared herein to be misdemeanors, shall be punished by a fine not exceeding one hundred dollars (\$100.00) nor less than ten dollars (\$10.00), or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment, and any justice court of the county in which such misdemeanor has been committed shall have jurisdiction thereof.

Sec. 52. All liens on land, provided for in this act shall be superior in right to all mortgages or other incumbrances placed upon the land

and the water appurtenant thereto or used in connection therewith, after the passage of this act.

Sec. 53. In the case of the seepage of water from any constructed works, the owner of such works shall have the first right to the use thereof upon filing an application with the territorial engineer as in the case of an original appropriation, but if such owner shall not file said application within one year after the completion of such works, or the appearance upon the surface of such seepage water, any party desiring to use the same shall make application to the territorial engineer, as in the case of unappropriated water, and such party shall pay to the owner of such works reasonable charge for the storage or carriage of such water in such works: Provided, That the appearance of such seepage water can be traced beyond reasonable doubt to the storage or carriage of water in such works.

Sec. 54. There is hereby granted, over all the lands now or hereafter belonging to the Territory, a right-of-way for ditches or canals and for tunnels, tramways, and telephone and electrical transmission lines, constructed by authority of the United States. All conveyances of territorial lands hereafter made shall contain a reservation of such right-of-way for such ditches, canals and other works constructed, commenced, or for which applications are on file at the date of such conveyance.

Sec. 55. No lands belonging to the Territory, within the areas to be irrigated from works constructed or controlled by the United States, or its duly authorized agencies, shall hereafter be sold except in conformity with the classification of farm units by the United States, and the title to such lands shall not pass from the Territory until the applicant therefor shall have fully complied with the provisions of the laws of the United States, and the regulations thereunder concerning the acquisition of the right to use water from such works and shall produce the evidence thereof duly issued. After the withdrawal of lands by the United States for any irrigation project, no application for the purchase of territorial lands within the limits of such withdrawal shall be accepted, except upon the conditions prescribed in this section. Any territorial lands needed by the United States for irrigation works shall be conveyed to the United States without charge.

Sec. 56. There is hereby appropriated out of any moneys in the territorial treasury, except the fund for the payment of interest on the bonded debt, and exclusive of the Hydrographic Survey Fund hereinbefore provided, the sum of \$3,500.00 annually, or so much thereof as may be necessary, for the payment of the salaries and expenses of the territorial engineer, and the services of assistants and expenses of the office and department of the territorial engineer, as provided by this act. All claims for services rendered and expenses incurred and materials and supplies furnished under the provisions of this act shall be audited by the territorial auditor for payment and be paid by the territorial treasurer in accordance with the provisions of the general statutes as to the auditing of claims against the Territory.

Sec. 57. In all cases where local or community customs, rules and regulations have been adopted and are now in force and in all

cases where such rules and regulations may be adopted from time to time by the majority of the users from a common canal, lateral, or irrigation system, and have for their object the economical use of water and are not detrimental to the public welfare, such rules and regulations shall govern the distribution of water from such ditches, laterals and irrigation systems to the persons entitled to water therefrom, and such customs, rules and regulations shall not be molested or changed, unless so desired by the persons interested and using said custom or customs, but nothing in this section shall be taken to impair the authority of the territorial engineer and water master to regulate the distribution of water from the various stream systems of the Territory to the ditches and irrigation systems entitled to water therefrom under the provisions of this act.

Sec. 58. No water master shall be appointed under this act, until the prior rights to the use of water have been determined in one or more stream systems in this Territory under the provisions of this act.

Sec. 59. Nothing contained in this act shall be construed to impair existing, vested rights or the rights and priorities of any person, firm, corporation or association, who may have commenced the construction of reservoirs, canals, pipe lines or other works, or who have filed affidavits, applications or notices thereof for the purpose of appropriating for beneficial use, any waters as defined in Section 1 of this act, in accordance with the laws of the Territory of New Mexico, prior to the passage of this act; Provided, however, That all such reservoirs, canals, pipe lines or other works and the rights of the owners thereof shall be subject to regulation, adjudication and forfeiture for abandonment, as provided in this act.

Sec. 60. Whenever the owner of a ditch, canal, pipe line, reservoir, or other works shall turn or deliver water from one stream or drainage into another stream or drainage, such owner may take and use the same quantity of water, less a reasonable deduction for evaporation and seepage to be determined by the territorial engineer, and such owner may be required by the territorial engineer to construct and maintain suitable measuring flumes or devices at the point or points where said water leaves its natural stream or water shed, or is turned into another stream or water shed. Where the rights of others are not injured thereby, it shall be lawful for the owner of any reservoir, canal, or other work, to deliver water into any ditch, stream, or water course, to supply, appropriations therefrom and to take in exchange therefor, either above or below such point of delivery, a quantity of water equivalent to that so delivered, less a proper deduction for evaporation and seepage to be determined by the territorial engineer; Provided, Such owner shall, under the direction of the territorial engineer, construct and maintain suitable measuring devices at the points of delivery and diversion.

Sec. 61. Whenever in accordance with the provisions of this act, any person, firm, association or corporation shall enlarge an existing canal, acequia, reservoir, or other works, in order to use the same in common with the former owner, such person, firm, association or corporation, shall have and enjoy the right to the use and benefit of the quantity of water added to the capacity of such structure or work by such enlargement. Where two or more owners are using or

have the right to use the same canal, acequia, reservoir or other water works, and one or more of such owners shall fail or neglect to do his or their proper share of the work or to furnish and pay for his or their proper share of the materials necessary for the maintenance, repair and operation thereof, anyone or more of such owners may, after ten days notice, proceed to perform such work, and furnish such materials, and may recover from each delinquent owner his proportionate share of the cost of such work and materials by a suit in any court of competent jurisdiction, and shall have a lien therefor upon such delinquent owner's share in said canal, acequia, reservoir or other works enforceable in the same manner as provided by law for the enforcement of mechanic's liens.

Sec. 62. There is hereby created a board of water commissioners to consist of three members who shall be appointed by the Governor of the Territory of New Mexico, by and with the advice and consent of the Legislative Council, from different sections of the Territory, and who shall hold office for four years, or until their successors shall be appointed and qualified. Each member of such board before assuming the duties of his office shall take the oath as prescribed by law for territorial officials, conditioned upon the faithful discharge of his duties. Such board shall, if there be pending before it business so requiring, meet at the office of the territorial engineer on the first Monday of May, August, November and February of each year, and shall hold special meetings as often as may be required by the board, either at the Territorial Capital or elsewhere as the business of the board may require.

Sec. 63. It shall be the duty of said board to hear and determine appeals from the actions and decisions of the territorial engineer in all matters affecting the rights, priorities and interests of water users and owners of, or parties desiring to construct canals, reservoirs, or other works for the conveyance, storage or appropriation of waters in this Territory. Any applicant or other party dissatisfied with any decision, act or refusal to act of the territorial engineer may take an appeal to said board; Provided, Notice of such appeal shall be served upon the territorial engineer and all parties interested within thirty days after notice of such decision, act or refusal to act, and unless such appeal is taken within said time, the action of the territorial engineer shall be final and conclusive. Notice of such appeal may be served in the same manner as summons in actions brought before the district courts of the Territory, or by publication in some newspaper printed in the country or water district wherein the work or point of desired appropriation in question is situated, once a week for four consecutive weeks, the last publication to be at least twenty days prior to the date when such appeal may be heard.

Sec. 64. It shall be the duty of the territorial engineer, upon notice being filed in his office of such appeal to forthwith transmit or produce before said board the papers, maps, plats, field notes and other data in his possession affecting the matter in controversy, or certified copies thereof, which copies shall be admitted in evidence by said board or by any court in this Territory as of equal validity with the originals.

Sec. 65. The decision of said board, upon any such appeal, shall be

filed in the office of the territorial engineer, who shall thereafter act in accordance with such decision. The decision of said board shall be final, subject to appeal to the district court of the district wherein such work, or point of desired appropriation, is situated, to be taken within sixty days from the date of such decision, upon notice served in the manner and within the time in this act provided for service of notice of appeal from decisions or acts of the territorial engineer, and upon filing a cost bond in such sum as the board may fix, with two or more sureties to be approved by the clerk of said board. If for any good reason said board should fail to meet and act upon any such appeal within ninety days after the filing of notice thereof with the clerk of said board, the case may be taken before the district court of the district wherein the work done or point of desired appropriation in controversy is situated upon petition and by writ of certiorari directed to said board and served upon the clerk thereof; Provided, That notice of the filing of such petition and the application for said writ shall be served upon all parties interested in the manner herein provided for service of notice of appeals to said board.

Sec. 66. In case of such appeal to the district court it shall be the duty of said board to certify to said court the record of all proceedings with reference to the matter in controversy together with all papers, maps, plats, field notes, and other documents and exhibits filed with said board. The costs in such cases to be taxed the same as costs in cases in the district court and at the same rates and that the same shall be paid in accordance with the judgment of the board or court in each case. All cases removed into the district court in pursuance of this section shall be tried de novo, except that evidence which may have been taken in the hearing before the territorial engineer and said board and transcribed, may be considered as original evidence in the district court, and the court shall allow all amendments which may be necessary in furtherance of justice in all cases, appealed by petition or certiorari, or otherwise, and may submit any question of fact arising therein to a jury, or to one or more referees at its discretion.

Sec. 67. Said board may adopt and use a seal and make rules for the hearing and determination of appeals not inconsistent with law and the provisions of this act. Any member of said board or the clerk thereof, or any referee appointed by said board to take testimony may administer oaths to witnesses; and the board or any such referee shall have the power to order or summon witnesses to appear and testify before it or such referee, and to produce books, papers and documents. Any person, or the officer or agent of any corporation who shall fail or refuse to appear and testify or to produce the papers and documents as required by any summons or order of said board or referee appointed by said board to take testimony, shall be guilty of a misdemeanor and upon conviction thereof before any district court of this Territory, shall be fined in a sum not less than fifty nor exceeding one hundred dollars, or by imprisonment in the county jail not to exceed three months, or by both such fine and imprisonment, in the discretion of the court.

Sec. 68. Each member of said board shall receive five dollars per day while in attendance at meetings thereof, and actual traveling ex-

penses while in the discharge of his duties; Provided, That no member shall receive pay for more than sixty days' service in any one year.

Sec. 69. The board shall appoint a clerk, who may be also a clerk or assistant to any other territorial officer, and who shall receive a salary not to exceed fifty dollars per month for his services as clerk to said board. The board may purchase necessary stationery and office supplies to an amount not to exceed one hundred dollars in any one year. The salary of the clerk, the per diem of the members of the board and the expenses of the members and office as herein provided, shall be paid at the time and in the same manner as those of other officers of the Territory.

Sec. 70. There is hereby granted upon and over all the lands now or hereafter belonging to the Territory of New Mexico, a right of way for canals, acequias, storage reservoirs or other water works, to any person, firm, association or corporation, desiring to construct and use the same, and who shall comply with the provisions of this act. Any person, firm, association, or corporation, desiring to construct and use a canal, acequia, reservoir, or other water works, upon or over lands belonging to the Territory of New Mexico, shall file with the territorial engineer an application as in the case of other appropriations, together with a map or plat describing such lands and if, upon investigation, the territorial engineer shall determine that such application is made in good faith, and that the party making the same is able to construct, maintain, and beneficially use the canal, acequia, reservoir, or other water works described in the application, he shall grant a permit in such form as he may adopt, giving to the applicant the right to use the lands described for such purposes; such permit may be assigned, and shall be subject to forfeiture for abandonment as in the case of other appropriations mentioned in this act.

Sec. 71. All permits, decrees and documents granting, defining or limiting water rights and rights of owners of canals, reservoirs and works for conducting, storing or appropriating water in this Territory shall be recorded in the office of the probate clerk and ex-officio recorder of the county in which the property, canal, reservoir or work is situated. When so recorded, copies of such permits, decrees and documents certified by the county recorder shall be admitted in evidence in any court of the Territory as of equal validity with the original.

Sec. 72. It shall hereafter be unlawful for any person, company or corporation to divert the waters of any public stream in New Mexico for use for reservoirs or other purposes in a valley other than that of any such stream, to the impairment of valid and subsisting prior appropriations of such waters.

Any violator of this section, shall upon conviction be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or imprisonment in the county jail for not less than one month nor more than three months, or both, in the discretion of the court.

Sec. 73. An act of the 36th Legislative Assembly of the Territory of New Mexico, entitled "An Act creating the office of Territorial Irrigation Engineer, to promote irrigation development and conserve the waters of New Mexico for the irrigation of lands and for other pur-

poses," approved March 16, 1905, and all other acts and parts of acts in conflict with this act, are hereby repealed, and this act shall be in full force and effect from and after its passage.

CHAPTER 54.

An Act to Amend an Act, Entitled "An Act to Conserve and Regulate the Use and Distribution of the Waters of New Mexico; to Create the Office of Territorial Engineer; to Create a Board of Water Commissioners, and for Other Purposes. Approved March 19, 1907." H. B. No. 205; Approved March 17, 1909.

Be it Enacted by the Legislative Assembly of the Territory of New Mexico:

Section 1. Amend Chapter 49, of the Session Laws of 1907, by adding the following additional section:

That this act shall not be construed to apply to stockmen, or stock owners who may build or construct water tanks or wells for watering stock.

Sec. 2. All acts and parts of acts in conflict with this act are hereby repealed.

Sec. 3. This act shall have full force and effect from and after its passage.

CHAPTER 128.

An Act Relating to Water Rights. H. S. C. B. No. 151 and H. B. No. 285; Approved March 18, 1909.

Be it enacted by the Legislative Assembly of the Territory of New Mexico:

Sec. 1. To the end that the waters of the several stream systems of the Territory may be conserved and utilized so as to prevent erosion, waste and damage caused by torrential floods, and in order that the benefits of the use of such waters may be distributed among the inhabitants and land owners of the country along said streams as equitably as possible without interfering with vested rights, the natural right of the people living in the upper valleys of the several stream systems to impound and utilize a reasonable share of the waters which are precipitated upon and have their source in such valleys and superadjacent mountains, is hereby recognized, the exercise of such right, however, to be subject to the provisions of Chapter

49 of the Acts of the Thirty-seventh Legislative Assembly of New Mexico.

Sec. 2. In cases of applications for permits to impound and utilize waters of any stream or flood waters under conditions which would cause or permit a considerable return flow of such waters into their natural channel above the diversion or storage works of other appropriators or of others using or who have acquired the right to use water from said stream or stream system, the Territorial Engineer is authorized to approve such applications whenever such storage or use of water by the upper owner or owners would not result in depriving such lower users or appropriators of water to the extent of their reasonable requirements.

Sec. 3. There shall be the same right of appeal from the action of the Territorial Engineer in approving or rejecting any such application as is provided in said Chapter 49 of the Acts of the 37th Legislative Assembly of New Mexico for the year 1907, and nothing in this act shall be construed to impair prior vested rights or the rights of prior appropriators of public waters of this Territory, or the rights of those who have filed or may file applications to appropriate public waters in compliance with existing laws of the Territory of New Mexico.

Sec. 4. This act shall take effect and be in force from and after its passage.

CHAPTER 129.

An Act to Amend Section 18 of Chapter 49 of the Laws of the 37th Legislative Assembly of the Territory of New Mexico. H. B. No. 40; Approved March 18, 1909.

Be it enacted by the Legislative Assembly of the Territory of New Mexico:

Section 1. That Section 18 of Chapter 49 of the Laws of the 37th Legislative Assembly of the Territory of New Mexico be and the same is hereby amended to read as follows:

"Sec. 18. Whenever requested so to do by any of the Boards of Commissioners of any of the counties of the Territory, it is hereby made the duty of the Territorial Engineer, either himself, or by an authorized assistant engineer, to co-operate with the said County Commissioners, in the engineering work required to lay out, establish and construct any drain to be used by any county or counties or portions of the same, for the purpose of diverting flood waters, lakes, water courses, and in general to aid and assist the counties of this Territory or their authorized officers in making preliminary surveys and establishing systems of drainage, or any other engineering work; and whenever the Board of County Commissioners of any such county shall by order determine to lay out, establish and construct any drain

to be used by any county or counties, or portions of the same, for the purpose of diverting flood waters, lakes or water courses, or to establish systems of drainage, which shall require that private property be taken or damaged, the county may exercise the right of eminent domain to take and acquire real or personal property, right-of-way, and privilege within or without its corporate limits, necessary for its corporate purposes, in the manner provided by law for the condemnation and taking of private property in the Territory of New Mexico for railroad, telegraph, telephone and other public uses and purposes. The engineers and surveyors of the Territory and of the county shall have the right to enter upon the lands of private persons and of private and public corporations for the purpose of making hydrographic surveys and examinations and surveys necessary for selecting and locating suitable sites and routes for any drain or drainage system, subject to responsibility for any damage done to such property in making such surveys and examinations."

Sec. 2. All acts and parts of acts in conflict herewith are hereby repealed and this act shall be in force from and after its passage.

CHAPTER 130.

An Act Concerning Claims to Rights or Priorities for the Use of Waters. H. S. C. B. No. 118; Approved March 18, 1909.

Be it enacted by the Legislative Assembly of the Territory of New Mexico:

Section 1. Any person, firm or corporation claiming any rights or priorities to the use of water for any beneficial purpose or purposes in the Territory of New Mexico, initiated prior to the approval of an act, entitled "An Act to Conserve and Regulate the Use and Distribution of the Waters of New Mexico; to Create the Office of Territorial Engineer; to Create a Board of Water Commissioners and for other purposes," approved March 19, 1907, the same being Chapter 49 of the Acts of the 37th Legislative Assembly of New Mexico, who had prior to said March 19, 1907, filed the sworn statement required by Section 493 of the Compiled Laws of 1897, and whose work of perfecting said rights or priorities was in progress by excavations, surveys or construction, prior to March 19, 1907, and who had also prior to said date, acquired by purchase the rights of any person or corporation that had expended more than forty thousand dollars in necessary surveys and construction of irrigation works within the same drainage area, shall have a reasonable time as determined by the Territorial Engineer within which to complete all necessary surveys, maps, plans, drawings and specifications and after the approval thereof by the Territorial Engineer shall have the benefit of the extensions of time provided by said Chapter 49 of the Laws of 1907 in which to complete construction and apply the water to a beneficial use.

Sec. 2. This act shall take effect from and after its passage.



